

No. 2632

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IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

JAMES R. RYAN, PETER BAZINET and
WILLIAM MILLER, Petitioning Creditors,
Appellants,

vs.

HERMAN MURPHY,

Appellee.

In the Matter of HERMAN MURPHY, Bankrupt.

PETITION FOR REHEARING

DANIEL O'CONNELL,
Solicitor for Appellants.

Filed this.....day of March, 1916.

FRANK D. MONCKTON, Clerk.

By....., Deputy Clerk.

Filed

MAR 7 - 1916

F. D. Monckton

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To the Honorable Circuit Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

The petition of James R. Ryan, Peter Bazinet and William Miller, petitioning creditors and appellants in the above-entitled cause showeth unto your Honors that, being aggrieved by the decree entered in this cause on the seventh day of February, A. D. 1916, by which the appeal of your petitioners

from the decree of the District Court was dismissed, for the reason that the evidence before the Referee in Bankruptcy and before the District Court was not incorporated in the transcript on appeal.

In this a great injustice is done the appellants and *a rehearing should be granted on the following grounds:*

1. The appellants *did incorporate* in their bill of exceptions *for the purpose of presenting it to this Honorable Court* as a part of the transcript *all the material evidence presented to the Referee in Bankruptcy and the District Court and have always been ready and anxious to have it presented and considered by this Court*, but the District Court exercising its powers under Equity Rules 75 and 76 of the Supreme Court of the United States, struck it all out as shown on pages 49, 50 and 51 of the "Transcript of Record" as follows:

"Counsel for the petitioning creditors have sought to incorporate in this statement on appeal a summary of such evidence. Such summary was excluded from this statement for the reason * * *, and for the further reason that recital of such evidence is not at all essential to a determination by the Court of Appeals of the question of law involved in this appeal."

2. The questions which the District Court intended to present, and thought it had sufficiently

presented to the Circuit Court of Appeals have not been decided by the Circuit Court of Appeals for the reason that the *District Court and not the appellants prevented them being properly presented and this against the wishes of the appellants.*

3. The appellants are greatly damaged by reason of the decision of the Circuit Court of Appeals, and appellants are confident that on a rehearing, any deficiency of the record can be supplied and the decision of the District Court reversed.

Wherefore, your petitioner humbly prays that your Honors will grant a rehearing, humbly submitting to such orders as the Court may make if the application be without merit, or otherwise.

DANIEL O'CONNELL,

Solicitor for said Appellants.

I, Daniel O'Connell, counsel for the said petitioning creditors, hereby certify that in my judgment this petition for a rehearing is well founded and that it is not interposed for delay; that I know the facts to be stated in this petition for rehearing and that I personally expended a large sum of money

and many days and nights of hard labor preparing the summary of said evidence required by said Equity Rule, in order that it might meet with the approval of said District Court and be presented to this United States Circuit Court of Appeals.

DANIEL O'CONNELL,
Solicitor for said Appellants.